Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/031,668 | LUNDGREN ET AL. |
| | Examiner | Art Unit | |
| | Sunit Pandya | 3714 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>26 January 2006</u>.

2a)☒ This action is **FINAL**.          2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-5,7-16,21-26,28-42 and 44-60* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-16,21-26,28-42 and 44-60* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/12/05</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

## DETAILED ACTION

### *Response to Amendment*

1.     This office action is in response to the amendment filed on January 26th, 2006, in which

applicant responded to claim rejections and amended claims according.

Claims 1-5 and 7-16, 21-26, 28-42, 44-60 are pending.

### *Claim Rejections - 35 USC § 112*

2.     The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

Claim 55 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing

to particularly point out and distinctly claim the subject matter which applicant regards as the

invention.

Claim 55 recites the limitation "said shortcomings" in the second line of the claimed

limitations.  There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

3.     The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

4.      Claims 1-5, 11, 15, 16, 21-26, 32, 36-42, 44, 49, 53-56 and 59-60 are rejected under 35

U.S.C. 102(e) as being anticipated by Shea (U.S. Patent No. 6,050,924).

Shea discloses a system for registering and analyzing data from a practiced stage, and for

generating action programs in dependence of the performed analysis as recited in claims 1, 21,

22 and 38.  The disclosed system comprises:

means for registering a result data for one or more predetermined parameters from one or

several performed stages (keypad 207, pulse monitor 210 of Figure 2 along with the related

description thereof, wherein result data for a predetermined parameter, e.g., practitioner pulse

rate or exercise level, are registered for performed stages or exercises);

means for calculating, for each of the parameters, a characteristics measurement value for

a predetermined characteristics measurement (Figure 11A along with the related description

thereof, wherein a characteristics measurement value, e.g., pulse rate, is calculated as a current

exercise or fitness level);

means for generating a characteristics profile by compiling the calculated characteristics

measurement values (Figure 11A along with the related description thereof, wherein a

characteristics profile is generated by compiling the calculated characteristics, e.g., pulse rate and

wherein the characteristics profile includes profile data regarding the practitioner, e.g., current

exercise or fitness level, and used in the selection of an exercise program as described in col. 12,

lines 31-45);

means for generating a comparison profile by comparing the characteristics profile with a

pre-stored normal profile (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current

exercise or fitness level and heart rate are compared to a pre-stored normal profile or

recommended exercise or fitness level); and

means for selecting, from a plurality of pre-stored action programs, based on the

characteristics profile or comparison profile, a pre-stored action program adapted for overcoming

shortcomings representative of the comparison profile or the characteristics profile (col. 6, lines

45-52 and lines 61-66 and col. 24, lines 27-54, wherein a pre-stored action program or exercise

program is automatically selected from a plurality of such programs based on one of the

characteristics profile, or current exercise or fitness level of the practitioner, and the comparison

profile, or recommended exercise or fitness level).

Regarding claim 38, Shea disclose means for selecting, using at least one of the

characteristics profile and the comparison profile, a pre-stored action program, wherein the pre-

stored action program is configured to convey a practitioner a plurality of steps or instructions

directed toward converging (a) a subsequent characteristics profile, generated from

characteristics measurement values calculated using data from at least one future practiced stage,

toward (b) the pre-stored normal profile (col. 6, lines 45-52 and lines 61-66, wherein a pre-stored

action program or exercise program is automatically selected from a plurality of such programs

based on one of the characteristics profile, or current exercise or fitness level of the practitioner,

and the comparison profile, or recommended exercise or fitness level and wherein the exercise

program conveys a plurality of steps or instructions to the practitioner as described in col. 10,

lines 27-58 and col. 11, lines 44-48 to obtain the recommended exercise or fitness level).

Regarding claims 2, 23 and 39, Shea discloses presentation means for graphically

presenting the comparison profile on a presentation unit (displays 266 and 280 of Figure 8A

along with the related description thereof, wherein the display 266 displays a monitored pulse

rate and display 280 displays instructions or feedback to a practitioner to obtain a recommended

exercise or fitness level and Figure 6 along with the related description thereof, wherein

instructions or feedback are presented to the practitioner).

Regarding claims 3, 24 and 40, Shea discloses comparison means for generating a

comparison profile by applying a predetermined mathematical operation to the characteristics

profile and the normal profile (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current

exercise or fitness level and heart rate are compared to a pre-stored normal profile or

recommended exercise or fitness level by applying a predetermined mathematical operation, e.g.,

subtracting the practitioner's age from 220 to obtain a maximum pulse rate).

Regarding claims 4, 25 and 41, Shea discloses comparison means for generating a

comparison profile, in the form of a difference profile, by calculating the difference between

characteristics measurement values for each parameter of the characteristics profile and the

normal profile, respectively (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current

exercise or fitness level and heart rate are compared to a pre-stored normal profile or

recommended exercise or fitness level).

Regarding claims 5, 26 and 42, Shea discloses presentation means for presenting the

comparison profile so that a current characteristics measurement value and a normal

characteristics measurement value can be visualized in the same diagram (displays 304 and 305

of Figure 7 along with the related description thereof, wherein display 305 presents a current

characteristics measurement value, e.g., current exercise or fitness level, and display 304

presents a normal characteristics value, e.g., recommended exercise or fitness level, on the same display). Also see col. 22, lines 48-62.

Regarding claims 11, 32 and 49, Shea discloses presentation means for presenting the comparison profile on the presentation unit in the form of a bar diagram having one bar for each game parameter, where bar height corresponds to the characteristics measurement value (Figure 6 along with the related description thereof, wherein each bar of Figure 6 represents an exercise or fitness level and wherein bar height corresponds to exercise or fitness level difficulty). Also see col. 22, lines 48-62.

Regarding claims 15 and 36, Shea discloses means for storing characteristics measurement values in a memory (memory 203, 205 and 212 of Figure 5 along with the related description thereof and col. 6, line 61 to col. 7, line 5).

Regarding claims 16 and 37, Shea discloses means for storing characteristics profiles in a memory (memory 203, 205 and 212 of Figure 5 along with the related description thereof, col. 6, line 61 to col. 7, line 5 and Figure 11A along with the related description thereof).

Regarding claim 44, Shea discloses means for visually presenting instructions and figures associated with the current action program (displays 304 and 305 of Figure 7 along with the related description thereof, wherein display 305 presents a current characteristics measurement value, e.g., current exercise or fitness level, and display 304 presents a normal characteristics value, e.g., recommended exercise or fitness level, on the same display). See also Figures 6 and 8A along with the related description thereof.

Regarding claims 53, 59 and 60, Shea discloses that the selection of the action program is automatic (col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54, wherein a pre-stored

action program or exercise program is automatically selected from a plurality of such programs

based on one of the characteristics profile, or current exercise or fitness level of the practitioner,

and the comparison profile, or recommended exercise or fitness level).

Regarding claim 54, Shea discloses that the action program comprises a training model

having one or more pre-stored instructions to perform at least one exercise to overcome at least

one of the shortcomings (col. 7, line 51 to 64 and col. 24, line 55 to col. 25, line 31, wherein the

exercise program selected includes a training model having one or more pre-stored instructions

to perform at least one exercise to overcome at least one of the shortcomings, e.g., for the

practitioner to select workouts or exercises suited for tennis or golf).

Regarding claim 55, Shea discloses that the shortcoming comprises an illustration or

display depicting as a percentage of a correct or incorrect data result relative to normal profile

(col. 24, line 55 to col. 25, line 54, wherein the exercise program the training includes

comparison between the practitioner working out and the normal level).

Regarding claim 56, Shea discloses a keyboard (508) for data entry, a processor (501) for

performing the calculating, profiling, comparing and selecting of the above-described profiles

and action program(s), and a database (507) for storing the reference profiles or recommended

exercise or fitness levels in Figure 10 along with the related description thereof. As described in

col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54, Shea discloses that processor 501

automatically selects a pre-stored action program or exercise program from a plurality of such

programs stored in database 507 based on one of the characteristics profile, or current exercise or

fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness

level.

## *Claim Rejections - 35 USC § 103*

5.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.      Claims 7-10, 12, 28-31, 33, 45-48 and 50 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Shea in view of Gatts (U.S. Patent No. 3,675,640).

Shea teach the system of independent claims 1, 21, 22 and 38 as detailed above.

Specifically, Shea teach a system wherein a pre-stored action program or exercise program is

automatically selected from a plurality of such programs based on one of the characteristics

profile, or current exercise or fitness level of the practitioner, and the comparison profile, or

recommended exercise or fitness level (col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-

54). However, Shea does not explicitly teach deriving the normal characteristics profile, or

recommended exercise or fitness level including pulse rate, from an average practitioner within a

group of practitioners with common properties as recited in claims 7, 8, 28, 29, 45 and 46. In a

related exercise program system, Gatts teaches comparing an exerciser's current fitness or health

level against a pre-established norm for a person of that type (col. 3, lines 3-6) to develop an

optimized exercise program for the exerciser. Further, Gatts teaches that the pre-established

norm for a person is based on normal population coefficients (col. 3, lines 49-50) that have been

derived from past research test data (col. 3, line 72 to col. 4, line 21). The "pre-established norm

for a person of that type" as taught by Gatts is based on an average person within a group of

people having common properties, such as age or health status (col. 3, lines 8-11). Gatts teaches

that comparing the exerciser's current fitness or health level against a pre-established norm for a

person of that type (col. 3, lines 3-6) helps to determine the most appropriate exercising device or

program (col. 6, lines 63-64). It would have been obvious for one skilled in the art at the time of

the invention to incorporate the pre-established norm for a person of that type selected from a

group of people with common properties as taught by Gatts into the exercise system of Shea in

order to select the most appropriate exercising device or program as taught by Gatts at col. 6,

lines 63-64.

Regarding claims 9, 30 and 47, the combination of Shea and Gatts teaches that the

practitioner is a sports practitioner wherein the stage is a game round of the sport (col. 24, lines

55-59 of Shea), the parameter is a game parameter (col. 25, lines 13-15 of Shea, wherein the

game parameter for a runner is time running a race or marathon) and the action program is a

training model for improvement of the practitioner's player properties within the sport (col. 24.

line 55 to col. 25, line 31 of Shea).

Regarding claims 10, 31 and 48, the combination of Shea and Gatts teaches means for

entering player data for the sports practitioner, wherein the normal profile is based on

corresponding player data, e.g., age (col. 3, lines 3-11 of Gatts).

Regarding claims 12, 33 and 50, the combination of Shea and Gatts teaches presentation

means for presenting the comparison profile on the presentation unit in the form of a curve chart

(col. 3, lines 3-20 of Gatts, wherein the exerciser's current fitness or health level is compared in

curve chart format against a pre-established norm for a person of that type so that the exerciser

can be presented with the comparison.

## *Allowable Subject Matter*

7.     Claims 13, 14, 34, 35, 51, 52, 57 and 58 would be allowable if rewritten to include all of

the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:  A

thorough search of the prior art fails to disclose any reference or references, which, taken alone

or in combination, teach or suggest, in combination with the other limitations, game parameters

which are various shot types and the characteristics measurement in the average number of shots

per round.

## *Response to Arguments*

8.     Applicant's arguments filed 1/26/2006 have been fully considered but they are not

persuasive.

The applicant argues that Shea does not teach a reference database containing a pre-

stored normal characteristics profile.  The examiner respectfully disagrees with the applicant and

would like to bring column 12, line 65 to column 13, line 9 to the applicant's attention, wherein

the practitioner's current exercise or fitness level and heart rate are compared to a pre-stored

normal profile or recommended exercise program which is determined by the system control

program of central computer or the fitness consultant, wherein there is a data base that contains

pre-stored characteristics profile.

The applicant argues that Shea does not disclose or suggest a comparison device devised

to generate a comparison profile by comparing characteristics profile with the pre-stored normal

characters profile. The examiner respectfully disagrees with the applicant and would like to

bring the applicant's attention to column 12, line 65 to column 13, line 9, wherein the

practitioner's current exercise or fitness level and heart rate are compared to a pre-stored normal

profile or recommended exercise or fitness level.

The applicant argues that Gatts fails to disclose any kind of an action program. The

applicant respectfully disagrees with the applicant. The combination of Shea and Gatts teaches a

system wherein a pre-stored action program or exercise program is automatically selected from a

plurality of such programs based on one of the characteristics profile (Shea col. 6, lines 45-52

and lines 61-66 and col. 24, lines 27-54).

The applicant argues that Gatts fails to disclose a comparison device, connected to the

profile generation device and reference database, and devised to generate a comparison profile

by comparing characteristics profile with pre stored normal characteristics profile. The examiner

respectfully disagrees with the applicant. The combination of Shea and Gatts disclose a

processor (Shea figure 5, element 201) where the comparison profile can be generated by

comparing characteristics profile and pre-stored normal profile.

The applicant argues that Gatts does not disclose or teach a selection device devised to

select, in dependence of characteristics profile or comparison profile, from a multitude of pre-

stored action programs, an action program adapted for overcoming shortcomings. The examiner

agrees with the applicant that Gatts does not disclose this, however as stated above in the

rejection Shea does infect discloses a selection device devised to select a pre-stored program

adapted to overcome the shortcomings. Shea discloses that the action program comprises a

training model having one or more pre-stored instructions to perform at least one exercise to

overcome at least one of the shortcomings (col. 7, line 51 to 64 and col. 24, line 55 to col. 25, line 31, wherein the exercise program selected includes a training model having one or more pre-stored instructions to perform at least one exercise to overcome at least one of the shortcomings, e.g., for the practitioner to select workouts or exercises suited for tennis or golf).

The applicant argues that Shea does not disclose anything corresponding to a training model that conveys steps or instructions to the practiser intended to help the practiser subsequently perform better in a sport having rounds. The examiner respectfully disagrees with the applicant. Columns 24 and 25, lines 55 to 31 of Shea reference discloses training model or programs that are intended to help the practiser perform better in a selected sport. Wherein the sports examples provided are soccer, tennis, golf, basketball, hockey, baseball, skiing, etc.

Consequently, for the reason provided above, the rejection is maintained.

### *Conclusion*

9.      **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Sunit Pandya whose telephone number is (571) 272-2823. The

examiner can normally be reached on M - F: 7:30 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert OLSZEWSKI can be reached on (571) 272-6788. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SP

**CORBETT B. COBURN**
**PRIMARY EXAMINER**